

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs July 24, 2007

**STATE OF TENNESSEE v. WILLIAM ROBERT FRANKS**

**Appeal from the Criminal Court for Knox County**

**No. 73274 Ray L. Jenkins, Judge**

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**No. E2006-02260-CCA-R3-CD - Filed August 10, 2007**

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The defendant, William Robert Franks, pled guilty to two counts of attempted aggravated sexual battery, a Class C felony, and received an effective sentence of eight years as a Range II, multiple offender, suspended to probation upon the service of nine months of incarceration. In August 2005, a probation revocation warrant was filed, and in May 2006, a revocation hearing was held in Knox County Criminal Court. The trial court revoked the defendant's probation and ordered the defendant to serve the remainder of his sentence in the Tennessee Department of Correction. The defendant appeals, arguing that the trial court acted in an arbitrary, non-conscientious manner in revoking the defendant's probation. After reviewing the record, we affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court  
Affirmed**

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and J.C. McLIN, JJ., joined.

Mark E. Stephens, District Public Defender; Robert C. Edwards, Assistant District Public Defender, for the appellant, William Robert Franks.

Robert E. Cooper, Jr., Attorney General and Reporter; Cameron L. Hyder, Assistant Attorney General; Randall E. Nichols, District Attorney General; Leslie Nassios, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

A review of the technical record indicates that in August 2001, the defendant was indicted on four counts of rape of a child and three counts of aggravated sexual battery. In April 2003, the defendant pled guilty to two counts of the lesser-included offense of attempted aggravated sexual battery. The trial court sentenced the defendant as a Range II, multiple offender, to eight years in the Tennessee Department of Correction on each count, with the sentences to be served concurrently.

In October 2003, the trial court entered judgments in these cases whereby the defendant would serve nine months in the Knox County Jail and the remainder of his sentence on probation.

In July 2004, after the defendant had been released from jail, a probation revocation warrant was issued for the defendant. In the affidavit supporting the warrant, the defendant's probation officer, Pamela Silano, stated that the defendant had violated his probation by failing to notify his probation officer of a change of residence, failing to report as instructed, failing to register as a sex offender with the Tennessee Bureau of Investigation, and failing to meet with treatment providers. For reasons that are unclear, the defendant was not arrested, and the trial court dismissed the revocation warrant in June 2005. In August 2005, another probation revocation warrant was issued. In the supporting affidavit, Officer Silano alleged that the defendant failed to notify his probation officer of a change in residence, failed to notify his officer that he had lost his job, tested positive for cocaine, and failed to abide by sex offender directives. The defendant was subsequently arrested, and a probation revocation hearing was held in May 2006.

At the hearing, Officer Silano testified that the defendant violated his probation by failing to report that he was terminated from his employment. She also testified that the defendant, who was living at the Clark Motel in Powell, requested to move to a residence located at 400 East Emerald Avenue in Knoxville. However, when the officer investigated the residence, she discovered that the residence was located two-tenths of a mile from a school, day care, or nursery. Because in her opinion the defendant's proposed residence would have violated state law,<sup>1</sup> Officer Silano instructed the defendant to move back to the Clark Motel. The defendant apparently told his probation officer that he would return to the motel, but on August 19, 2005, the officer visited the motel and discovered that the defendant had moved from the motel. The officer testified that defendant also violated his probation by failing to make payments toward the \$5550.10 he owed in court costs and by testing positive for cocaine. The officer also testified that in March 2006, after the probation violation warrant under review had been filed, the defendant was charged with failing to register as a sex offender. The defendant pled guilty to that offense three days before the hearing in the instant case.

On cross-examination, the officer testified that the defendant had tested positive for cocaine on July 6, 2005. She stated that the defendant had been tested on more than one occasion following this initial test, and that those tests were positive. The officer also testified that the defendant stopped reporting to her after the problems concerning the defendant's residence arose. Regarding the defendant's conviction on failure to register as a sex offender, the officer testified that typically a sex offender under supervision is registered with the assistance of his probation officer, but the

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<sup>1</sup>The law as it existed at the time the revocation warrant was issued stated that "[n]o sexual offender . . . shall knowingly reside or work within one thousand feet (1,000') of the property on which any public school, private or parochial school, licensed day care center, or any other child care facility is located." Tenn. Code Ann. § 40-39-211(a) (Supp. 2004).

defendant was only required to report to his probation officer four times per year for registration purposes.

The defendant, testifying in his own defense, stated that he attempted to leave the Clark Motel because of the illegal drug activity that allegedly occurred there. The defendant testified that he sought to move into a residence with Charlie Shepard, for whom the defendant stated he “was doing a little bit of work,” but the defendant was informed that the residence was approximately eight hundred feet away from a church with a daycare, which violated the one thousand-foot statutory requirement. The defendant testified that his probation officer told him to move back to the Clark Motel, and he attempted to do so, but he could not because he did not have enough money to renew his lease at the motel. Regarding the loss of his job, the defendant testified that as he was leaving work at JFG Coffee one day, his supervisor told him not to come back to work. The defendant stated that he was unsure why his job was terminated, but he guessed that his employer became dissatisfied over his showing up late for work on those days when he had to report to his probation officer. The defendant admitted that he was in violation of the terms of his probation and had pled guilty for failing to register as a sex offender, but stated that if given the opportunity to remain on probation, he would abide by any terms set by the court. On cross-examination, the defendant denied that his dismissal from JFG had anything to do with poor job performance or being argumentative.

### ANALYSIS

On appeal, the defendant contends that the trial court abused its discretion by revoking his probation. Specifically, he contends that the trial court acted in an arbitrary, non-conscientious manner in revoking the defendant’s probation and imposing the defendant’s original sentence. We disagree.

A trial court may revoke a sentence of probation upon finding by a preponderance of the evidence that the defendant has violated the conditions of his release. Tenn. Code Ann. § 40-35-311(e). A trial court is not required to find that a violation of probation occurred beyond a reasonable doubt. Stamps v. State, 614 S.W.2d 71, 73 (Tenn. Crim. App. 1980). The evidence need only show that the court has exercised conscientious judgment in making the decision and has not acted arbitrarily. Id. Our standard of review on appeal is whether the trial court abused its discretion in finding that a violation of probation occurred. State v. Mitchell, 810 S.W.2d 733, 735 (Tenn. Crim. App. 1991). In order to conclude that the trial court abused its discretion, there must be no substantial evidence to support the determination of the trial court. State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991). Such a finding “reflects that the trial court’s logic and reasoning was improper when viewed in light of the factual circumstances and relevant legal principles involved in a particular case.” State v. Shaffer, 45 S.W.3d 553, 555 (Tenn. 2001) (quoting State v. Moore, 6 S.W.3d 235, 242 (Tenn. 1999)).

In this case, the defendant has failed to establish that his probation was erroneously revoked. The defendant argues that the trial court's reinstatement of the original sentence appears to be "more vengeful than purposeful," but the defendant does not provide specific evidence to support these assertions. Conversely, the state presented evidence that the defendant clearly violated the terms of his probation by testing positive for cocaine, not paying court costs, failing to notify his probation officer about a change in his employment, and changing residences without his officer's knowledge or consent. Furthermore, the defendant admitted violating the terms of his probation. In light of the evidence, the trial court acted properly and not arbitrarily in ordering the defendant to serve the balance of his original sentence in confinement. Therefore, the defendant is not entitled to relief on this issue.

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CONCLUSION

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Upon consideration of the foregoing and the record as a whole, the judgment of the trial court is affirmed.

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D. KELLY THOMAS, JR., JUDGE

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